

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform—Mobility Fund)	WT Docket No. 10-208

**OPPOSITION OF FRONTIER COMMUNICATIONS CORPORATION TO PETITIONS
FOR RECONSIDERATION**

I. INTRODUCTION

Frontier Communications Corporation (“Frontier”) hereby submits its comments opposing various aspects of Petitions for Reconsideration of the Federal Communications Commission’s (“Commission”) *Report and Order* filed in the above-captioned proceeding.¹ Frontier urges the

¹ *In re*: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, WT Dkt. No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (“*Report and Order*”).

Commission to deny Verizon's *Petition for Reconsideration*² that seeks to reverse the progress that the Commission made in its *Report and Order* with respect to ending phantom traffic.

Frontier also urges the Commission to reject those petitions of ViaSat, WISPA and NTCH³ that call for expanding the Commission's carefully reasoned definition of "unsubsidized competitor."

II. THE COMMISSION SHOULD REJECT VERIZON'S PETITION FOR RECONSIDERATION WITH RESPECT TO ITS ARGUMENTS TO REVIST A TECHNICAL OR INDUSTRY STANDARD EXCEPTION IN THE PHANTOM TRAFFIC RULES

As a company that has lost millions in revenue due to phantom traffic, Frontier has been an active proponent of strict rules to require proper call identifying information.⁴ The Commission established its phantom traffic rules in an effort to "close loopholes that are being used to manipulate the intercarrier compensation system."⁵ With its Petition, Verizon is attempting to create a new loophole in the form of a "technical feasibility and industry standards exception."⁶ The Commission should reject Verizon's request for reconsideration to include such an exception.

A. Verizon Presents No New Arguments for the Commission to Reconsider

² Petition for Clarification or, In the Alternative, for Reconsideration of Verizon, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (filed Dec. 29, 2011) (*Verizon Petition*).

³ ViaSat, Inc. Petition for Reconsideration, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (filed Dec. 29, 2011) (*ViaSat Petition*); Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (filed Dec. 29, 2011) (*WISPA Petition*); NTCH, Inc. Petition for Reconsideration, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (Dec. 29, 2011) (*NTCH Petition*).

⁴ See Frontier Section XV Comments, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, WT Dkt. No. 10-208, at 10-11 (filed Apr. 1, 2011) (noting Frontier's estimate that 5-8% of the traffic it receives is phantom traffic, accounting for millions of dollars in lost revenue).

⁵ *Report & Order* at ¶ 702.

⁶ *Verizon Petition* at 8.

The Commission has already considered and rejected the concept of a technical feasibility and industry standards exception in the phantom traffic rules. Verizon notes that since 2006 numerous proposals for addressing phantom traffic have included a provision to allow for these exceptions.⁷ Verizon further notes that numerous commenters raised this issue in response to the Commission's *Notice of Proposed Rulemaking* on the subject.⁸ Verizon's arguments effectively prove that the Commission has had a full record from which it could consider including these exceptions, but the Commission has clearly made a policy decision that adopting such exceptions would be harmful. The Commission specifically considered⁹ and rejected Verizon's exception arguments based on a rational and real concern that "any exceptions would have the potential to undermine the rules," and that "disputes concerning the applicability of exceptions could arise and lead to costly disagreements or litigation."¹⁰

Significantly, Verizon offers neither evidence to rebut the Commission's conclusion, nor new evidence that the Commission did not previously consider; Verizon merely rehashes its existing arguments in favor of an exception. The Commission has a high standard for reconsideration, "warranted only if the petitioner cites material error of fact or law or presents new or previously unknown facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action."¹¹ Verizon has

⁷ *Id.* at 8-9.

⁸ *Id.* at 9.

⁹ *See Report and Order* at ¶ 722 n.1247 (citing Verizon's request to include technical feasibility and industry standards exceptions in the phantom traffic rules).

¹⁰ *Id.* at ¶ 723.

¹¹ *In re* Petitions for Reconsideration of the Second Report and Order; Implementation of Section 207 of the Telecommunications Act of 1996, et al., Order on Reconsideration, 14 FCC Rcd 19924, ¶ 7 (1999).

not presented any error of fact or law, nor has it shown that its arguments had not been fully considered. Accordingly the Commission should reject Verizon's *Petition*.

B. The Commission's Rules Provide Sufficient Recourse in the Event of Technical Infeasibility and Allow Ample Time for Compliance

The Commission made a reasoned decision that instead of a general exception to the phantom traffic rules, "[p]arties seeking limited exceptions or relief in connection with the call signaling rules . . . can avail themselves of established waiver procedures." Verizon, unhappy that the Commission rejected its initial call to include the technical feasibility and industry standards exceptions in the rules outright, seeks reconsideration of the waiver process and/or a delay in implementing the phantom traffic rules.¹² The Commission should reject both of Verizon's requests.

Verizon's arguments against both the waiver process and the timeframe for implementation are belied by the fact that the other two largest ILECs have already filed for waivers. Verizon argues that "as a practical matter, it is not even possible for Verizon and other carriers to analyze the myriad call flows and determine where a waiver of the rules may be necessary—and on what grounds—by the effective date of the new phantom traffic rules."¹³ Yet on the same day that Verizon filed its *Petition* claiming that the Commission's standards could not be met, AT&T, a larger ILEC than Verizon, filed its own *Petition for Limited Waiver* of the phantom traffic rules citing *just two* specific circumstances for which it requests an exemption.¹⁴ CenturyLink, a smaller ILEC than Verizon, filed its own *Petition for Limited Waiver* of the phantom traffic rules within a few weeks of Verizon's *Petition* requesting waiver in *just three* specific

¹² *Verizon Petition* at 11.

¹³ *Id.* at 12.

¹⁴ AT&T Inc., *Petition for Limited Waiver*, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, WT Dkt. No. 10-208 (filed Dec. 29, 2011).

circumstances.¹⁵ Clearly, Verizon's claims that the waiver process is unworkable have been disproved.

Further, the waiver process is appropriate because it requires carriers to describe why they cannot meet the Commission's rules that are designed to prevent fraud in the marketplace. While Frontier may disagree with some of the merits of the waiver petitions as yet filed, it is a more transparent process for the carrier to state why compliance with the rules is infeasible rather than granting a preemptive blanket exception. Indeed Verizon itself indicates that it would use a technical and industry standard exception to relieve itself of complying with the Commission's rules for "significant call volumes" and an "exploded" number of call flow routes.¹⁶ Such an expansive exception would significantly weaken the phantom traffic rules, thereby undermining the Commission's goal in adopting them. The Commission has determined that the phantom traffic rules are necessary to combat a "sizable problem" that "distorts the intercarrier compensation system and chokes off revenue that carriers depend on to deliver broadband other essential services to consumers, particularly in rural and difficult to serve areas of the country."¹⁷ It is only appropriate for a provider to be exempt from such rules through the waiver process.

For similar reasons, the Commission should also reject Verizon's request to extend the effective date of the rules related to phantom traffic. In its *Notice of Proposed Rulemaking*, the Commission took the step of soliciting comments on arbitrage activities such as phantom traffic in advance of other sections because it recognized the need to address the issue in the "near

¹⁵ CenturyLink, Inc., Petition for Limited Waiver, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, WT Dkt. No. 10-208 (filed Jan. 23, 2012).

¹⁶ *Verizon Petition* at 9.

¹⁷ *Report and Order* at ¶703.

term.”¹⁸ Verizon has been on notice that call signaling rules would be put into effect for some time and has decided that implementing the new rules was not in Verizon’s best interest. The Commission should not allow Verizon to slow down implementation of the rules requiring proper call signaling information.

III. THE COMMISSION SHOULD REJECT CALLS TO BROADEN THE DEFINITION OF “UNSUBSIDIZED COMPETITOR”

Three entities filed Petitions for Reconsideration¹⁹ asking the Commission to broaden its carefully reasoned definition of what comprises an unsubsidized competitor for the purposes of the Connect America Fund (“CAF”). The Commission correctly concluded that an unsubsidized competitor is a “facilities-based provider of residential terrestrial fixed voice and broadband service.”²⁰ The Commission should reject all such arguments for expanding the definition to providers that do not meet the Commission’s basic required levels of broadband service.

The Commission should deny ViaSat’s *Petition* to include satellite broadband service in the CAF definition of unsubsidized competitor because ViaSat itself recognizes that it cannot meet the Commission’s broadband service demands. ViaSat attempts to argue that an unsubsidized competitor should not be limited to terrestrial broadband providers because its own satellite services “can and will offer competitive broadband services that meet the objective performance requirements established by the Commission.”²¹ Yet in the same document, ViaSat argues for a

¹⁸ *In re: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13 at ¶ 34 (rel. Feb. 9, 2011).

¹⁹ *ViaSat Petition, WISPA Petition, NTCH Petition*, *supra* n.3.

²⁰ *Report and Order* at ¶ 103.

²¹ *ViaSat Petition* at 9. We note that much of ViaSat’s broadband performance claims remain speculative based upon future satellite launches and improvements in technology. *See id.* at 3 (“Critically, ViaSat-1 [launching in 2012] is only the first in a series of innovations that will enable ViaSat to provide broadband service to the millions

reduction in the objective broadband “capacity allowance” criterion because abiding by comparable urban capacity allowances would force satellite providers to “incur substantial costs so that they can offer usage limits” of the type that the Commission has deemed appropriate for its CAF program.”²² ViaSat’s service offerings range in capacity limits from 9-22 GB of combined upload and download, depending upon the level of service chosen by the customer.²³ While the Commission did not decide on a firm number for a capacity limit, it is clear that the capacity offered by satellite does not meet the objective threshold established by the Commission.²⁴ If ViaSat cannot meet the Commission’s minimum, objective, criteria for a broadband requirement, then the Commission must reject ViaSat’s request to have its own satellite broadband service included in what constitutes an unsubsidized competitor.

Similarly, the Commission should reject WISPA’s request for fixed wireless services to be considered as an unsubsidized competitor in areas where terrestrial voice is also available. WISPA admits that, while some of its fixed wireless members offer voice service, many provide broadband service only.²⁵ A central tenet of the Commission’s legal justification for supporting the transition to the CAF is that voice remains the supported service with the added requirement that voice providers must also offer broadband service.²⁶ Without completely restructuring the legal basis for the CAF program, fixed wireless service providers that do not offer voice services

of U.S. homes that are difficult or expensive to reach by cable or fiber networks. Going forward, ViaSat plans to design a series of broadband satellites with even more advanced technical characteristics and even more compelling bandwidth economics.”).

²² *ViaSat Petition* at 17.

²³ Wild Blue Package Comparison Chart *available at* <http://www.wildblue.com/options/comparison-chart>.

²⁴ *See Report and Order* at ¶ 99 (concluding that a 250 GB capacity limit appears reasonable where a 10 GB monthly data limit would not).

²⁵ *WISPA Petition* at 3.

²⁶ *Report and Order* at ¶ 75.

must be excluded. WISPA acknowledges this but does not provide a compelling reason to grant its request.²⁷ Yet beyond this fact, it would be illogical for the Commission to include fixed wireless providers as unsubsidized competitors and deny CAF support to entire service areas based upon the presence of a fixed wireless provider given that WISPA admits its members do not want the burdens of becoming ETCs. The existing, terrestrial ETC in that area would still have all Carrier of Last Resort obligations, creating mismatched funding and service obligations. The ETC would be mandated to provide a level of service that WISPA members refuse to provide because it can be prohibitively expensive to do so.²⁸ In short, WISPA wants all of the benefits of being an ETC in an area yet none of the obligations. The Commission should therefore reject the request to include these providers as unsubsidized competitors if they are unwilling to provide the voice services that the Commission has deemed necessary of all CAF recipients.

Finally, the Commission should also reject the arguments of NTCH to expand what qualifies as an unsubsidized competitor to “include any provider of residential voice and broadband service so long as the provider meets minimum service thresholds.”²⁹ As an initial matter, NTCH does not provide a definition of appropriate “minimum service” thresholds. Furthermore, the Commission has already established service requirements based on carefully considered objective standards for broadband, including speed, latency, and capacity measures to accommodate wireless providers at this time. The Commission considered and rejected the inclusion of wireless providers in the CAF calculation because mobile broadband cannot satisfy

²⁷ *WISPA Petition* at 4-5.

²⁸ *Id.* at 7 (“In some rural and hard to serve markets, WISPs find that the cost of incurring additional Title II regulations would exceed the benefits of deploying and providing voice services to customers.”).

²⁹ *WISPA Petition* at 13.

all of the service requirements.³⁰ Further, the Commission specifically contemplated that mobile broadband providers could become an unsubsidized competitor in the future, promising to “revisit the definition of unsubsidized competitor” “as mobile and satellite services develop over time.”³¹ NTCH offers no new evidence to support its claim beyond what the Commission has already considered. Lastly, NTCH suggests revisions to the Commission’s Mobility Fund so that it may better participate³² but does not develop why the Mobility Fund is an insufficient complementary mechanism to the CAF. Indeed the Mobility Fund could provide high cost areas both fixed and mobile broadband service. The Commission should reject NTCH’s *Petition* because the Commission has provided a well reasoned CAF program that allows for the development of both fixed and mobile broadband in high cost areas.

³⁰ *Report and Order* at ¶ 104. (“Likewise, while 4G mobile broadband services may meet our speed requirements in many locations, meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors.”).

³¹ *Id.*

³² *NTCH Petition* at 7.

IV. CONCLUSION

For the foregoing reasons Frontier respectfully requests the Commission to deny the Petitions for Reconsideration of Verizon, ViaSat, WISPA, and NTCH.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I, Michael D. Saperstein, Jr., hereby certify that on February 9, 2012, a copy of the foregoing was sent via United States mail, postage prepaid, to the following:

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